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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 09, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHN-MICHAEL RAY DURHAM,

Plaintiff,

v.

ETHAN WILKE, OFFICER
BAXTER, JOHN DOE, JANE DOE
1415 E. HARTSON AVE,
SPOKANE, WA, ZIP 99202; JANE
DOE, 1413 E HARTSON AVE,
SPOKANE WA ZIP 99202,

Defendants.

NO. 2:24-CV-0371-TOR

ORDER DENYING CONSTRUED
MOTION TO SUPPLEMENT
COMPLAINT AND MOTION FOR
SUBPOENA AND TEMPORARY
RESTRANDING ORDER

BEFORE THE COURT are Plaintiff's Construed Motion for Leave to File
Supplemental Pleadings (ECF No. 32) and Plaintiff's Motion for Issuance of
Subpoenas and Temporary Restraining Order (ECF No. 33). These matters were
submitted for consideration without oral argument. The Court has reviewed the
record and files herein and is fully informed. For the reasons discussed below,
both of Plaintiff's Motions are **DENIED**.

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RESTRANDING ORDER ~ 1

1 Plaintiff filed his original complaint on October 29, 2024 (ECF No. 1)
2 alleging various claims against two law enforcement officers, Ethan Wilke and
3 Officer Baxter, as well as several Jane Does and John Does, related to an incident
4 that occurred on October 25, 2024 at Liberty Park Terrace Apartments. ECF No.
5 1. The Court granted Defendants' motion for summary judgment on July 23, 2025
6 dismissing all of Plaintiff's claims. ECF No. 27. Plaintiff filed a Notice of Appeal
7 of the Court's Order on July 28, 2025. ECF No. 29.

8 On August 12, 2025, Plaintiff filed both a Supplemental Complaint ("SC")
9 and a motion for issuance of subpoenas and a temporary restraining order against
10 Clifford Butler, the property manager of Liberty Park Terrace Apartments. ECF
11 Nos. 32, 33. The SC contains a copy of an email Plaintiff sent to what appears to
12 be the Spokane County Sheriff's Office and other unknown recipients demanding
13 the identities of law enforcement officers that Plaintiff alleges served a subpoena
14 duces tecum to Encompass Visitation Services on July 2, 2025. ECF No. 32 at 1.
15 Reviewing Plaintiff's motion and supporting declaration, it appears Plaintiff sought
16 to serve a subpoena duces tecum to Clifford Butler for the release of Liberty Park
17 Terrace Apartment's surveillance footage that was taken on August 8 and August
18 9, 2025. ECF No. 32 at 9. Plaintiff alleges the footage shows certain criminal
19 activity that took place on the property from August 8-9, 2025. *Id.* Plaintiff also
20 alleges that the Spokane County Sheriff's Office intercepted and withheld the

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COMPLAINT AND MOTION FOR SUBPOENA AND TEMPORARY
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1 subpoena. ECF No. 33-1 at 1.

2 Plaintiff now moves the Court to issue a subpoena duces tecum to Clifford
3 Butler compelling the production of the surveillance footage at issue and grant a
4 temporary restraining order “to prohibit harassment, intimidation, or retaliatory
5 contact by Defendant Butler, Liberty Park Terrace Staff, or affiliated agents.” ECF
6 No. 33 at 1.

7 As an initial matter, Plaintiff never sought leave from the Court to file a
8 supplemental complaint in this action. *See Fed. R. Civ. P. 15(d)*. Therefore, the
9 Court construes Plaintiff’s filing of the SC (ECF No. 32) as a motion for leave to
10 file supplemental pleadings. After reviewing the SC and related filings, it does not
11 appear that any of the conduct Plaintiff now complains of relates to his original
12 complaint. Supplemental pleading cannot be used to introduce a “separate, distinct
13 and new cause of action.” *Planned Parenthood of S. Arizona v. Neely*, 130 F.3d
14 400, 402 (9th Cir. 1997) (internal quotation and citation omitted). Plaintiff’s SC
15 here appears to involve a new and distinct action against different defendants.

16 Additionally, Plaintiff’s request for an issuance of a subpoena and a
17 temporary restraining order also appears to be completely unrelated to his original
18 complaint. *See Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631,
19 638 (9th Cir. 2015) (“[T]here must exist a relationship between the injury claimed
20 in a motion for injunctive relief and the conduct alleged in the underlying

ORDER DENYING CONSTRUED MOTION TO SUPPLEMENT
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RESTRANING ORDER ~ 3

1 complaint.”)

2 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 3 1. Plaintiff’s Construed Motion for Leave to File Supplemental Pleadings
4 (ECF No. 32) is **DENIED**.
- 5 2. Plaintiff’s Motion for Issuance of Subpoenas and Temporary Restraining
6 Order (ECF No. 33) is **DENIED**.

7 The District Court Executive is directed to enter this Order and furnish
8 copies to counsel and Plaintiff. The file remains **CLOSED**.

9 DATED September 9, 2025.



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11 THOMAS O. RICE
12 United States District Judge
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ORDER DENYING CONSTRUED MOTION TO SUPPLEMENT
COMPLAINT AND MOTION FOR SUBPOENA AND TEMPORARY
RESTRANING ORDER ~ 4